STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 22, 2011
v	No. 296061 Wayne Circuit Court
MARCUS ALLEN GREENLEE, Defendant-Appellant.	LC No. 09-014203-FC

Before: WILDER, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of four counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(e), one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(e), and assault with a dangerous weapon, MCL 750.82. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to serve concurrent terms of imprisonment of 37 to 80 years for each CSC I conviction, 10 to 15 years for the CSC II conviction, and two to four years for the felonious assault conviction. Defendant appeals as of right. We affirm.

I. FACTS

This case arises from an incident that occurred on May 17, 2009. Complainant testified that she was 20 years old at the time, and had agreed to go on an outing with defendant. Complainant had only been acquainted with defendant for a short period of time. She initially met defendant when he approached her in his car while she was walking down a street in Detroit. Complainant stated that defendant seemed friendly. She took his phone number and they subsequently had several friendly phone conversations, none of which included talk of sex.

Complainant testified that, for the outing in question, she accompanied defendant in his truck to Belle Isle. They walked about the island, showed each other pictures of their respective children, and listened to the radio. Complainant denied that any sexual activity took place on Belle Isle. Next, complainant accompanied defendant to a drive-in movie, which was already in progress when they arrived. According to complainant, she expressed a preference to watch a movie that had not yet begun, but defendant was not responsive, and she began to get a "weird feeling."

Complainant left to go to the bathroom, but upon her return to the truck, defendant cut her finger with a pocket knife, drawing blood. Then, defendant held the knife to complainant's throat and said he would kill her if she did not go to the back of the truck. Complainant testified that she became hysterical, but complied with defendant's demand. Although complainant protested that she was having her period, defendant commanded her to lie back, forced her to disrobe in part, and then pulled her pants down. In response to complainant's protests, defendant "was telling me shut . . . up. He, like, you my woman now and I love you, saying all kinds of crazy stuff."

Complainant testified that defendant forcibly threw her menstrual pad out of the truck, then applied his tongue to her rectum, then to her vagina, then penetrated her vagina with his penis. According to complainant, defendant said, "Don't cry. I'm your man. I love you. . . . You my baby." When defendant then started kissing her on the mouth, complainant feigned enjoyment out of fear for her life, and suggested that they go to her apartment. Complainant testified that defendant drove her to her apartment and accompanied her inside the building, but then she became "loud" with defendant, which apparently "scared him off."

At trial, defendant testified that he only engaged in consensual sex with complainant and she performed fellatio on him at Belle Isle, for which he paid $40 when she demanded money. Defendant denied producing a knife.

Another female witness testified at trial that she also met defendant when he approached her on the street in his vehicle. According to the witness, defendant seemed friendly, and she gave him her phone number. The witness estimated that approximately five benign contacts followed, which included socializing with some of defendant's friends. She elaborated that none of their conversations included talk of sex, and that she and defendant were never boyfriend and girlfriend. After a short period of acquaintance, in May 2007 when the witness was 19 years old, defendant picked her up and took her to a motel ostensibly to meet some friends. However, according to the witness's testimony, when she and defendant entered the motel room, no one else was present. The witness testified that she went to the bathroom, at the time feeling no fear, but that when she emerged defendant started choking her. The witness continued,

> He snapped my belt and then my belt buckle broke. I ended upon the bed. I'm trying to sit myself up and the choking got harder. At this time he's on top of me telling me he love me, don't do this, and snapped my pants, . . . pulled my pants down . . . still choking me, unsnapped my shirt.

According to this witness, defendant then forced his penis into her vagina. The witness testified that defendant drove her home afterward. Defendant's sole argument on appeal is that the trial court abused its discretion by admitting this witness's testimony into evidence. We disagree.

II. OTHER ACTS

We review a trial court's decision on whether to admit evidence of other bad acts for an abuse of discretion. *People v Kahley*, 277 Mich App 182, 184; 744 NW2d 194 (2008). "A trial court abuses its discretion when it fails to select a principled outcome from a range of reasonable and principled outcomes." *Id.*

MRE 404(b)(1) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Evidence of other acts is admissible if it is offered for a proper purpose other than to show the defendant's propensity to commit an offense, if it is relevant, and if its probative value is not substantially outweighed by unfair prejudice. *People v Crawford*, 458 Mich 376, 385, 390; 582 NW2d 785 (1998), citing *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).

In this case, because defendant proffered the defense of consent, the challenged evidence was relevant to show defendant's scheme, plan, or system in doing an act. Defendant struck up relationships with both women, who were similar in age, by approaching them in his vehicle while they were walking on the street and sharing phone numbers. In both cases, several friendly, nonsexual contacts occurred before defendant initiated nonconsensual sexual conduct. Both witnesses recalled that defendant became suddenly violent when they returned from the restroom. Although complainant alleged that defendant pulled a knife on her and the other woman did not, defendant's physical attacks were directed in both instances at the victims' throats. Both witnesses testified that defendant forcibly pulled down their pants and penetrated them. In addition, both witnesses testified that defendant protested his love for them as they tried to resist his sexual aggression. Finally, both witnesses testified that defendant drove them home afterward. The challenged testimony thus went beyond suggesting generally that defendant has the character of a sexual aggressor or that there was nothing special in the nature of the sexual conduct alleged, showing instead that defendant's actions as described by complainant substantially followed the mode of operation that the other witness had experienced.

Defendant also contends that the trial court failed to weigh the probative value of the challenged evidence against its potential for unfair prejudice. See *Crawford*, 458 Mich at 385; MRE 403. The trial court entertained arguments from the parties concerning the balance between probative value and risk of unfair prejudice. Although the trial court did not make findings regarding this balance on the record, "[a] trial judge is presumed to know the law," *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988), and "'[t]he Supreme Court has never required the trial courts to make this determination on the record." *People v Smith*, 243 Mich App 657, 675; 625 NW2d 46 (2000), quoting *People v Vesnaugh*, 128 Mich App 440, 448; 340 NW2d 651 (1983). In any event, the trial court guarded against any unfair prejudice by instructing the jury that if it believed the testimony concerning the earlier sexual conduct, it could not convict because it believed defendant was guilty of other bad acts and it could only rely on the other bad acts as evidence of a "common plan." "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). For these reasons, we conclude that the trial court's decision to admit the challenged bad acts evidence was not an abuse of discretion. *Kahley*, 277 Mich App at 184.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Pat M. Donofrio